

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 16L-02
DATE REFERRED: January 26, 2016
DATE OF NOTIFICATION: January 28, 2016
DATE ACTIVATED: February 25, 2016

EARLIEST SOL: February 19, 2020
LATEST SOL: April 20, 2020
ELECTION CYCLE: 2016

SOURCE:

RAD REFERRAL

RESPONDENT:

Oakland County Democratic Party and Phillip W.
Reid in his official capacity as treasurer

**RELEVANT STATUTE
AND REGULATIONS:**

52 U.S.C. § 30104(b)¹
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3(a), (b)
11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Commission's Reports Analysis Division ("RAD") referred the Oakland County Democratic Party and Phillip W. Reid in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose disbursements totaling \$761,912.15 on three different reports: its 2015 February Monthly, 2015 March Monthly, and 2015 April Monthly Reports.² The Committee acknowledges the violations but requests that the

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

² See RAD Referral, dated January 19, 2016 ("Referral"), incorporated herein by reference. According to the Cover Memo to the Referral, the additional disbursements disclosed on the Committee's amended 2015 March

Commission take no action because of various factors, including accounting software problems, the large volume of activity, and the lack of impact on federal election activity. For the reasons discussed below, we recommend that the Commission open a MUR, find reason to believe that the Committee violated 52 U.S.C. § 30104(b) and authorize pre-probable cause conciliation with the Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The Committee is a local party committee of the Democratic Party.³ On February 19, 2015, the Committee filed its original 2015 February Monthly Report disclosing \$84,387.57 in disbursements.⁴ On July 16, 2015, the Committee filed an amended 2015 February Monthly Report disclosing \$180,866.72 in disbursements that were not disclosed in the original filing.⁵ On September 27, 2015, RAD sent a Request for Additional Information (RAFI) to the Committee requesting clarification regarding the additional disbursements of \$180,866.72 that

Monthly Report dated July 16, 2015, meets the threshold for referral to OGC in accordance with the 2015-2016 RAD Review and Referral Procedures for Unauthorized Committees ("Referral Procedures"). See Cover Memo to Referral at 1. The additional disbursements disclosed on the Committee's amended 2015 February Monthly and 2015 April Monthly Reports are referable to the Alternative Dispute Resolution Office ("ADRO"), but are included in this Referral in accordance with the Referral Procedures to limit unnecessary duplication of matters. *Id.* The Committee is a respondent in MUR 6978, which is based upon an audit of the Committee's activity during the 2012 election cycle and is currently in pre-probable cause conciliation. Finally, the Committee has been referred to ADRO in RR 15L-49 (ADR 792) for cumulative errors during the 2014 election cycle during which it received 51 audit points. See *id.* at 1-2. A referral for an audit of the Committee for the 2014 election cycle was not pursued due to Commission policy that a committee cannot be audited in consecutive election cycles.

³ See Amended Statement of Organization filed on February 18, 2016, available at http://docquery.fec.gov/pdf/394_201602189008479394_201602189008479394.pdf.

⁴ See Referral at 1. This amount is the total of disbursements reported on line 21(b) (Other Federal Operating Expenditures) of the Detailed Summary Page. The Committee also reported small disbursements in other categories on the Detailed Summary Page of the original 2015 February Monthly Report, but those disbursements are not included in this referral. For the original 2015 March Monthly and 2015 April Monthly Reports, the disbursements reported on line 21(b) comprise all the disbursements reported.

⁵ *Id.* at 2. One day earlier, on July 15, 2015, the Committee filed an amendment to the 2015 February Monthly Report disclosing only a small increase in disbursements (\$11.95) from the original report. *Id.* Also on July 15, 2015, the Committee filed amendments to the 2015 March and April Monthly Reports, disclosing no change in disbursements from the original reports. *Id.* at 2-3.

1 were not originally disclosed.⁶ On September 28, 2015, the Committee filed a Miscellaneous
2 Electronic Submission (FEC Form 99) in response to the RFAI, which stated "our amended
3 reports show an increase in disbursements over our original report due to bingo disbursements
4 that did not properly transfer from QuickBooks to NGP."⁷ On November 2, 2015, the
5 Committee filed an additional FEC Form 99, which repeated that statement *verbatim* and added,
6 "our amendment properly reported the disbursements."⁸

7 On March 19, 2015, the Committee filed its original 2015 March Monthly Report
8 disclosing \$52,671.01 in disbursements.⁹ On July 16, 2015, the Committee filed an amended
9 2015 March Monthly Report disclosing \$355,689.84 in disbursements that were not disclosed in
10 the original filing.¹⁰ On September 30, 2015, RAD sent an RFAI to the Committee requesting
11 clarification regarding the additional disbursements of \$355,689.84 that were not originally
12 disclosed.¹¹ On November 4, 2015, the Committee filed an FEC Form 99 in response to the
13 RFAI, which stated, in part:

14 Our amended reports show an increase in disbursements over our
15 original report due to bingo disbursements that did not properly transfer
16 from QuickBooks to NGP on our February 2015 [R]eport. The amending
17 of the February [R]eport necessitated the filing of amended reports for all
18 following months. Our amendment properly reported the disbursements.¹²
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⁶ *Id.* at 2.

⁷ *Id.* QuickBooks is a business accounting program. See <http://quickbooks.intuit.com>. NGP VAN is a technology provider to Democratic campaigns and organizations. See <https://www.ngpvan.com>.

⁸ Referral at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3.

1 On April 20, 2015, the Committee filed its original 2015 April Monthly Report disclosing
2 disbursements of \$18,340.78.¹³ On July 16, 2015, the Committee filed an amendment disclosing
3 \$225,355.59 in disbursements that were not disclosed in the original filing.¹⁴ On September 30,
4 2015, RAD sent an RFAI to the Committee requesting clarification regarding the additional
5 disbursements of \$225,355.59 that were not originally disclosed.¹⁵ On November 2, 2015, the
6 Committee filed an FEC Form 99 in response to the RFAI, which repeated the statements that
7 the Committee made in the FEC Form 99 concerning the 2015 March Monthly Report.¹⁶

8 In response to the Referral, the Committee identified three reasons for its reporting errors.
9 First, it acquired four new bingo fundraising licenses from the State of Michigan in September
10 2014, which significantly increased the amount of funds to be reported.¹⁷ Second, the
11 Committee changed its internal reporting procedures substantially in February 2015.¹⁸ The
12 Committee acknowledges that RAD informed the Committee of reporting problems concerning
13 its 2014 disclosure reports, and the Committee determined that it needed to review disclosure
14 reports going back to early 2013.¹⁹ Third, the Committee had two previous treasurers and
15 bookkeepers during the period it had reporting problems.²⁰

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Resp. at 1.

¹⁸ *Id.* The Committee states it changed from a process where the treasurer prepared and filed the disclosure reports and the bookkeeper entered transactional data into QuickBooks to a process where the bookkeeper transfers QuickBooks data directly into the disclosure reports using NGP.

¹⁹ *Id.* The Committee received a total of 15 RFAs for calendar year 2014 disclosure reports.

²⁰ *Id.* The Committee changed treasurers in January 2013, January 2014, and March 2015. *See* Amended Statements of Organization (Jan. 3, 2013, Jan. 29, 2014, Mar. 5, 2015).

1 The Committee requests that the Commission take no action in this matter.²¹ The
2 Committee acknowledges that in the course of "all these operational changes and massive
3 correction of previous reports the inadvertent underreporting of the disbursements at issue
4 took place."²² The Committee then asserts that "when it was discovered, it was promptly
5 corrected."²³ The Committee also asserts that the failure to report disbursements and the
6 subsequent amendments to correct the problems had no effect on federal election activity
7 because the bulk of the disbursements was prize money paid to individual players at its bingo
8 games, and the remaining disbursements were administrative costs, such as maintaining an
9 office.²⁴ Finally, the Committee asserts that the problems in transferring data from QuickBooks
10 to NGP have been resolved and will not occur again.²⁵

11 **B. Legal Analysis**

12 The Act requires committee treasurers to file reports of receipts and disbursements in
13 accordance with the provisions of 52 U.S.C. § 30104.²⁶ These reports must include, *inter alia*,
14 the total amount of receipts and disbursements, including the appropriate itemizations, where
15 required.²⁷

16 Here, the Committee did not comply with the Act's reporting requirements when it failed
17 to disclose \$761,912.15 in disbursements on its original 2015 February Monthly, 2015 March

²¹ Resp. at 1.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²⁷ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

1 Monthly and 2015 April Monthly Reports. The Committee does not deny these reporting
2 errors.²⁸ Although the Committee requests that the Commission take no action, the matter was
3 appropriately referred to OGC under Standard 7 of RAD's Review and Referral Procedures.²⁹
4 Further, the Committee's explanations for its errors do not obviate its obligation to file accurate
5 reports with the Commission. We therefore recommend that the Commission open a MUR and
6 find reason to believe that the Committee violated 52 U.S.C. § 30104(b).

²⁸ Resp. at 1.

²⁹ See Referral Procedures at 75.

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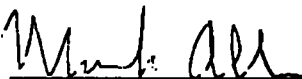
IV. RECOMMENDATIONS

1. Open a MUR in RR 16L-02;
2. Find reason to believe that Oakland County Democratic Party and Phillip W. Reid in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
3. Approve the attached Factual and Legal Analysis;
4. Enter into conciliation with Oakland County Democratic Party and Phillip W. Reid in his official capacity as treasurer prior to a finding of probable cause to believe;
5. Approve the attached conciliation agreement; and
6. Approve the appropriate letter.

Daniel A. Petalas
Acting General Counsel


Stephen A. Gura

Deputy Associate General Counsel for Enforcement


Mark Allen

Assistant General Counsel

4.12.16
Date

Delbert K. Rigsby
Attorney

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